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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3581 OF 2007

Yatin Vijay Dalvi .. Applicant

versus

State of Maharashtra .. Respondent

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Mr.A.P. Mundargi i/b Ms.Swapna Kode for the applicant

Mr.Rajesh More APP for the State.

CORAM : D.G.KARNIK, J

DATED : 26th November 2007

P.C.:

1. Heard learned counsel for the applicant and learned APP for the State.

2. The applicant has made this application for bail under section 439 of the Code of Criminal Procedure. The applicant is alleged to be connected with crime registered under no.I-459 of 2006 registered at Panvel Town police station for offences

punishable under section 302, 201, 120B r/w sec.34 of the IPC. The charge-sheet has been filed against the applicant in the Sessions court at Panvel. The applicant is in custody since 17th January 2007. the prosecution case in short is that the applicant along with four accomplices Hitesh Naik, Pravin More, Amit Chaudhary and Hemant Chavan driver of the hired Sumo in conspiracy with each other committed a murder of Sonali More and her assistant Santosh Vatkar near Dapoli railway police station, Taluka Panvel, District Raigad. The offence is alleged to have been committed in the night between 29th and 30th November 2006.

3. According to the prosecution Sonali left her house on 29th November 2006 and did not return in the night. It appears that a missing complaint was lodged with the police station at MIDC Mumbai. ON 30th November 2006 at about 6.00 p.m station master of the Dapoli police station lodged the first information report with the Panvel police station. Bodies of two persons one male and one female were identified to be that of Sonali More and her assistant Santosh Vatkar.

4. On investigation, the police apprehended the applicant and other accomplices and the charge-sheet

has been filed against all of them. Admittedly, there is no eye witness. The entire case is based on circumstantial evidence. Pravin More has been granted bail by the Sessions Court in Criminal Application no.753 of 2007 on 10th August 2007. Hemant Chavan has been granted bail by the Sessions court in Criminal Application no.491 of 2007 by an order dated 11th June 2007. Hitesh Naik and Amit Chaudhary have been granted bail by the Sessions Court by an order dated 10th August 20007. Thus, all the four co-accused have been granted bail. The murder is alleged to have been made by strangulation associated with incised wound over the neck. The statement of shopkeeper Gayatri Shravan Yadav was recorded on 22nd January 2007. She has stated that the rope (by which the strangulation allegedly was made) was purchased by Hitesh. She has not named the present applicant as the purchaser of the rope. The statement of another shopkeeper from whom the shaving razor was purchased prima facie is a weak evidence and the razor which was allegedly purchased from the shopkeeper and was used was not recovered from the present applicant but was allegedly recovered from Hitesh. Despite this, Hitesh has also been granted bail by the Sessions court. In the circumstances, on the basis of parity the applicant is entitled to bail. No specific overt act is alleged against the

present applicant.

5. The learned APP submits that there was a conversation between Sonali and the applicant on 29th November 2006 as can be established from the telephone records. A mere conversation from the telephone on the 29th November would not connect the applicant directly with the crime. The Sessions court while granting the bail to the other accused has observed that the accused is in custody for several months and the trial is not likely to begin for a few more months. In the circumstances, the applicant is entitled to a bail. For these reasons I pass the following order:-

O R D E R

. Application is allowed. The applicant be released on P.R. Bond of Rs.50,000/- with one or two sureties to make up the aggregate amount of Rs.50,000/-, subject to the following conditions:-

i) The applicant shall not contact nor shall make any inducement or make any threats to any of the prosecution witnesses.

ii) The applicant shall not leave the

jurisdiction of the Thane and Raigad district without prior permission of the sessions court.

iii) The applicant shall report to the concerned police station once in a month between 1st and 5th of every months.

. It is clarified that all observations made in this order are only preliminary for consideration of bail and the learned Sessions Judge shall not take them into consideration in any way while considering the merits of the case.

(D.G. KARNIK, J)